SUPREME COURT, U. S.
Supreme Court, U. S.
FILED
MAR 26 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 74-1089

OCTOBER TERM, 1974

BETTY MARKOWITZ, WALTER MARKOWITZ and CHARLES MARKOWITZ, on behalf of themselves and their sister ESTELLE POSNER,

Petitioners,

against

ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Opinion Below

On June 10, 1974, the United States District Court for the Southern District of New York (WYATT, J.) denied petitioner's motion for a preliminary injunction directing the Commissioner of the New York State Department of Social Services to provide her "with medical assistance payments as provided by law," and dismissed the action for lack of jurisdiction of the subject matter and for failure of the complaint to state a claim upon which relief can be granted. A copy of the unreported Memorandum Opinion appears in the Appendix to the Petition for Writ of Certiorari. On December 2, 1974 the United States Court of

Appeals for the Second Circuit affirmed the order and judgment of the District Court. A copy of the Circuit Court's order appears in the Petition for Writ of Certiorari.

Jurisdiction

Petitioner seeks to invoke the jurisdiction of the Court under 28 U.S.C. § 1254(1).

Questions Presented

Does a controversy over medical assistance eligibility as defined by a state's social service law present a federal question?

Is there a basis for the exercise of a court's equitable jurisdiction where a plaintiff has an adequate remedy at law and is not threatened by irreparable injury if denied equitable relief?

Is a suit which in effect seeks a money judgment against a state barred by the Eleventh Amendment?

Statement of the Case

Petitioner and her husband had been residents of New York City. Petitioner is mentally and physically incompetent. In August of 1971 the husband placed her in the Masonic Home at Utica, New York which is in Oneida County. On March 7, 1973, her brothers made on her behalf an application for medical assistance to the Oneida County Department of Social Services. On April 18, 1973 the County denied the application on the ground that she was living in a home which was providing for her physical and medical needs (A. 32-33).*

* The numerals refer to the page numbers of petitioner's Appendix and Supplemental Appendix.

Thereafter, the brothers made a request in her name for a hearing which was held on November 1, 1973. On December 17, 1973, the Commissioner issued a decision. He noted that petitioner's needs were being taken care of at the Home (A. 36); and also that since she was a resident of New York City when she entered the Home in Oneida County, the City rather than the County would be responsible for providing her with medical assistance if she became eligible for it (A. 36-37). He ruled that New York's Social Services Law § 62(5)(d) requires that her application for medical assistance must be made in New York City rather than to Oneida County.

The District Court noted that this was a state administrative controversy over medical assistance; that the State has not denied any federally protected rights; that the jurisdictional amount was not present; that no substantial constitutional claim was advanced; and that neither the brothers nor the mother were a proper party to the action (A. 3-4).

Reason Why Certiorari Should Be Denied

Petitioner sought an injunction directing the Commissioner of Social Services of New York to provide her "with medical assistance payments as provided by law." The Masonic Home in New York where she was residing was providing her with medical assistance. The Commissioner noted that petitioner's needs were being taken care of at the Home (A. 36).

The application for medical assistance was made to Oneida County instead of New York City, where petitioner had been a resident before entering the Home. As the Commissioner observed, under New York's Social Services Law § 62(5)(d) the City rather than the County would be responsible for providing her with medical assistance if she became eligible for it (A. 36-37). The importance of

local responsibility for public assistance in New York has been recognized by a statutory three-judge court in *Lindsay* v. *Wyman*, 372 F. Supp. 1360, 1369-1370 (S.D.N.Y. 1974).

As the District Judge noted one fair hearing had been held, and another could be requested in New York City. Moreover, if there is error in a denial of an application for medical assistance an Article 78 proceeding in the state courts is available to correct it (A. 3). Indeed petitioner, in fact, initiated such proceeding. Also, as stated, it appeared that her needs were being taken care of at the Home. Petitioner had an adequate remedy at law, and she was not threatened by irreparable injury if denied equitable relief. Therefore, there was no basis for the exercise of the District Court's equitable jurisdiction. See *Sosna* v. *State of Iowa*, —— U.S.——, 42 L. Ed. 2d 532; *Younger* v. *Harris*, 401 U.S. 37 (1971). *Cf. Renegotiation Board* v. *Bannercraft Clothing Co., Inc.*, 415 U.S. 1, 20-21 (1974).

Petitioner claimed that she had been deprived of alleged constitutional rights to medical treatment, to travel and to be with her family. The allegations did not amount to a substantial constitutional claim such as is required to support federal jurisdiction. *Hagans* v. *Lavine*, 415 U.S. 528, 537-538 (1974). The deprivations were alleged to have resulted from the issuance by the Commissioner of a decision after a fair hearing denying her medical assistance. See petitioner's Supplemental Appendix. As the District Court noted this was a state administrative controversy over medical assistance. Whether petitioner is eligible for medical assistance, and if she is, which public welfare district is responsible for providing it is an issue of state law (New York's Social Services Law §§ 366, 62[5][d]) and not a federal question.

The relief requested was an order directing the Commissioner to provide her with medical assistance payments

and damages. As *Lindsay* v. *Wyman, supra* points out the payment is a local responsibility. Obviously this was not a liability which she sought to impose upon him personally. As stated above, the Commissioner merely issued a decision after a hearing as to the particular local responsibility as required by law. In effect, she was asking for a money judgment against the State and the suit was barred by the Eleventh Amendment. *Edelman* v. *Jordan*, 415 U.S. 651 (1974); *Scheuer* v. *Rhoades*, 416 U.S. 232-238 (1974); *Rothstein* v. *Wyman*, 467 F. 2d 226 (2d Cir. 1972); cert. den. 411 U.S. 921 (1973).

CONCLUSION

The petition for writ of certiorari should be denied.

Dated: New York, New York, March 21, 1975.

Respectfully submitted,

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